Supreme Court, U.S.
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In The Supreme Court
OF THE
United States

October Term, 1997

Libambu M. SCHILLER
Petitioner
vs.
US State Department
Respondent

PETITION FOR A WRIT OF CERTIORARI

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16 pp

QUESTION PRESENTED FOR REVIEW

Whether Equal Treatment and Equal Protection rights secured by the Fourteenth Amendment of the United States Constitution are limited to abuses by State Government's officials/entities and do not apply to abuses by US Government's officials/entities toward Foreign-Born US Citizens Spouses of US Citizens by Birth.

If Yes, what Constitutional provision offers equal treatment and equal protection to people of that distinct minority group?

If No, why wouldn't the District Court have jurisdiction over this case while it has held trials over other cases of Civil Rights abuses by United States Government officials/entities?

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW.....i
TABLE OF AUTHORITIES (Cases, Statutes, Rules)..... iii
JURISDICTIONAL GROUND FOR PETITION.....1
CONSTITUTIONAL OR STATUTORY PROVISIONS.....1
STATEMENT OF CASE AND PRESENTATION OF
THE ISSUE BELOW..... 3
LEGAL ARGUMENT..... 4
CITATIONS..... 5
CHIEF JUSTICE WILLIAM J. BRENNAN..... 5
CHIEF JUSTICE WARREN..... 6
APPENDIX..... .....A, B & C

TABLE OF AUTHORITIES
Cases

Page

Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics (1971) 403 U.S. 388, 91 S.Ct. 1999.....2

Hernandez v. Texas 347 U.S. 475, 74 S.Ct. 677 (1954)...6

Monell v. Department of Social Services 436 U>S> 658, 98 S.Ct. 2018, 56 L. Ed. 2d 611 (1978)..... 3

Simmons v. City of Philadelphia 503 U.S. 985, 112 S.Ct. 1671, 118 L. 2d Ed. 392 (1992)..... 5

Statutes

Fourteenth Amendment..... .1

Section 42 U.S.C.A. §1983 (1988)..... .2

The Bivens..... 2

The Monell.....3

Rules

Rule 13.1..... ..1

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JURISDICTIONAL GROUNDS FOR PETITION

This Petition for Writ of Certiorari is taken from an order of the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia, dated March 10, 1998 dismissing Petitioner's action (Appendix A and B). This Petition is timely and proper pursuant to Rules of the Supreme Court of the United States, Rule 13.1 and 28 U.S.C. sections 1253 and 1254.

CONSTITUTIONAL OR STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment

"All persons born or naturalized in the

United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, **nor deny to any person within its jurisdiction the equal protection of the laws**".

Section 42 U.S.C.A. §1983 (1988)

"Every person who, under any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceedings for redress"

The Bivens

"Violation of a person's Fourth Amendment rights against unreasonable searches and seizures by **a federal agent acting under color of his authority** gives rise to a cause of action for damages consequent upon his unconstitutional conduct".

"Where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief"

The Monell

"When execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy , inflicts injury upon a plaintiff, the government as an entity is responsible under 42 U.S.C. § 1983".

STATEMENT OF THE CASE AND PRESENTATION OF THE ISSUE

On June 15, 1994, I invited my brother Libambu Ntsaykolo, then 34- year- old, who is a proven Evangelist, to spend two months with us here in our home in North Arlington, VA. The US Embassy in Kinshasa denied him a visa, saying that he was a "visa risk".

On November 15, 1995, I invited my niece Libambu Bokenga, a 26-year-old seamstress apprentice, to come over during Christmas vacation to stay with my children so that I can go to Zaire to see my aging mother whom I had not seen for 7 years. Again, she was denied a visa because she doesn't "get a situation".

Meanwhile, other US citizens have even brought cooks and baby-sitters who don't have a car and own a house and who are not their relatives, to the United States

of America to live in their houses to provide permanent help.

Meanwhile, about 55,000 foreigners, the majority of them without a car and a house, are brought each year into the United States through Immigration Lottery, to live here permanently. Many of them end up on Welfare.

I suffered two years of psychological torture, emotional and mental distress, physical stress, change in personality, because of that unfairness, abuse of power, discrimination and deliberate indifference. **Compensation sought: $500,000.**

The issue is over **subject matter**. Petitioner has complained about unfairness, abuse of power, discrimination and deliberate indifference. Respondent's arguments have been about visa appeal. Petitioner is addressing the cause or abuses and Respondent is addressing the symptoms or consequences of abuses without refuting Petitioner's accusations evidenced by numerous correspondence. Still, the case was dismissed. Petitioner has been arguing about violation of the Fourteenth Amendment Equal Treatment and Equal Fourteenth Amendment Equal Treatment and Equal Protection Rights and Respondent has been arguing about Consular Officers "unreviewability".

LEGAL ARGUMENT

As a US Citizen, part of the Foreign-Born American minority living in the United States because of my marriage to a US Citizen by Birth, I am entitled to protection against

unfairness, abuse of power, discrimination and deliberate indifference, be it by private or public institutions.

That protection is secured by the Fourteenth Amendment and its Section 42 U.S.C. §1983.

The "under color of" federal authority requirement is easily met in this case, as *The Monell* established that,

> " One way an entity may 'cause' a person to be subjected to a constitutional injury, for example, is simply to charge its agents to meet specified objectives without taking reasonable steps to prevent them from trampling on federally protected rights. No deliberative act on the part of the employer is required to 'cause' deprivation in this fashion". **Justice William J. Brennan** (*Monell v. Department of Social Services. of the City of New-York, 436 U.S. S. Ct. 658 (1978).*

The "power to prevent" requirement is also met as *The Simmons* established that,

> "Thus far as Section § 1983 is concerned, the entity faces liability when it either knows or *should know* of a recurring situation within its bailiwick that threatens a

> constitutional deprivation and fails to take appropriate responsive measures". (*Simmons v. City of Philadelphia*, 503 U.S. 985 - 1992).

As a Foreign-Born (Congo-Zaire) US Citizen with a clean immigration record, criminal record, financial record and credit record, I do not deserve the inhuman treatment of being deprived of a visit by a member of my family. My children have not seen a single maternal uncle, aunt or cousin since we moved back here in 1991.

> "The Fourteenth Amendment prohibition of unreasonable discrimination among classes of persons contemplate not only discrimination affecting Whites and Negroes, but also discrimination affecting other classes of persons having a common foreign ancestry" **Chief Justice Warren** (*Hernandez v. Texas*, 347 US 475 - 1954)

DATED June 3, 1998

Respectfully submitted,

By Libambu M. Schiller
Petitioner *pro se*

APPENDIX A

No. 97 - 2153 CA-97-652-A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Libambu M. Schiller, *Appellant*

v.

State Department, *Appellee*

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Chief District Judge. (CA - 97 - 652 - A)

Submitted December 11, 1997
Decided December 24, 1997

Before HALL and WILLIAMS, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion

Libambu M. Schiller, Appellant Pro Se. Jeri Kaylene Somers, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

PER CURIAM

Appellant appeals the District Court's order granting

Appellee's motion to dismiss for lack of subject matter jurisdiction. We have reviewed the record and the District Court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the District Court. Schiller v. State Dep't, No. CA - 97 - 652 - A (E.D.VA. Aug. 7, 1997). We dispense with oral argument because the facts and legal contentions are adequately presented in the marerials before the Court and argument would not aid the decisional process.

AFFIRMED

ORDER

The appellant has filed a petition for rehearing.
The Court denies the petition for rehearing.

For the Court

/s/Patricia S. Connor
Clerk

FILED March 10, 1998

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Libambu M. Schiller, *Plaintiff*
v.
Department of State, *Defendant*

Civil Action No. 97 - 652 - A

ORDER

This matter came before the Court on Defendant's Motion to Dismiss for lack of Subject Matter Jurisdiction. The Court finds that it lacks subject matter jurisdiction over this case. Accordingly, it is hereby

ORDERED that Defendant's Motion to Dismiss is GRANTED, and this case is DISMISSED.

Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
August 4, 1997

APPENDIX C

LETTER TO APPEAL JUDGES FOLLOWING DENIAL OF PETITION FOR REHEARING

RE: Case No. 97 - 2153
Schiller v. State Department

March 23, 1998

Dear Judges,

Although the whole approach seems bizarre to me, I hope that you didi your best and it's just a sad mistake due more to the system than to the people using that system.

I still believe in Justice and I think human laws should serve Justice and not the other way around. I will move to the last level of the Judiciary before turning to the other branch, hoping that along the way there will be someone who will question some serious flaws of the legal system. There are people like the late Justice William Brennan or the US District Judge Stanley Sporkin in the system. Maybe I will come across one of them some day.

I feel like a helpless child left in the hands of an abusive father. The abusive father in this case is an entity, the US Government State Department.

Thanks any way.

(Mrs) Libambu M. Schiller